

Draft to Clerk:
Approved:
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**MINUTES OF THE REGULAR MEETING
BOARD OF ZONING APPEALS
June 14, 2007 7:30 P.M.
CITY COUNCIL CHAMBERS, 10TH FLOOR CITY HALL**

I. ROLL CALL

The meeting was called to order by Chairman Burgess at 7:30 p.m. Chairman Burgess read the BZA introduction. Roll call was taken.

Present:

B. Burgess E. Horne A. Frederick G. Hilts M. Mayberry (arrived at 7:40)

Absent: F. Lain G. Swix

Staff: S. Stachowiak

A. A quorum of at five members was present, allowing voting action to be taken at the meeting.

II APPROVAL OF AGENDA

G. Hilts moved, seconded by E. Horne to approve the agenda with the addition of “excused absences” under new business.

On a voice vote, the motion carried 5-0.

III. HEARINGS/ACTION

A. BZA-3905.07, SW Corner of Forest Road and Alliance Drive

This is a variance request by Granger Construction Company on behalf of TechSmith Corporation. The applicant is proposing to construct a new building at the southwest corner of Forest Road and Alliance Drive that would be 69 feet in height at it's highest point. Section 1260.09 of the Zoning Ordinance permits a maximum height of 45 feet for buildings in the “D-1” Professional Office district. A variance of 24 feet to the height limitation is therefore, being requested. Staff recommended approval of the request on a finding that the variance would be consistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application.

Barry Roney, Granger Construction, spoke in support of the request. Mr. Roney said that they will be preserving the majority of the existing vegetation and will adding more trees and berms to the site.

Joel Smith, Neumann Smith Architects, stating that this will be an environmentally friendly project that will utilize the Leadership in Energy Efficient Design (LEED) standards, bio-swales, rain gardens and will preserve the existing natural features of the site. Mr. Smith said that in order to meet the LEED standards, they need to bring natural light into the

building which is the purpose of the atrium. He said that the atrium will be 69 feet high whereas the remainder of the building will be 46 feet in height which exceeds the city requirement by only 1 foot.

Mr. Burgess asked if anyone else wished to address the Board. Seeing none, the Board moved into the Committee of the Whole.

Mr. Hilts stated that he would like to watch the rain gardens being constructed.

Mr. Smith said that Mr. Hilts should contact Granger Construction and they will arrange for him to see the construction of the rain gardens.

Mr. McGrain stated that the ordinance may need to be reviewed to determine if changes are necessary in order to accommodate LEED certified buildings.

Mr. Frederick stated that there is a substantial public interest in approving this variance since preserving natural features and conserving energy has a positive impact on the quality of life for everyone. He also said that the practical difficulty involves the woodlands and wetlands on the site which are natural features that the applicant did not create.

Mr. Hilts stated that an eco-friendly site creates a good environment for employees.

Mr. McGrain stated that the ordinance is outdated and wasn't the original intent of the ordinance to require a lower height to the detriment of natural site features.

E. Horne moved to approve BZA-3905.07, a variance of 24 feet to the height limitation for a new building at the southwest corner of Forest Road and Alliance Drive, as depicted on the plan dated 5-14-07, on a finding that the variance would be consistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application. Seconded by B. McGrain.

| VOTE | YEA | NAY |
|-----------|-----|-----|
| Mayberry | X | |
| Horne | X | |
| Hilts | X | |
| Burgess | X | |
| McGrain | X | |
| Frederick | X | |

Motion carried, 6-0, BZA-3905.07, was approved.

B. BZA-3906.07, 3500 Block, S. ML King

This is a variance request by Custom Sign Center Inc. on behalf of Tim Horton's. The applicant is proposing to erect a ground sign at the proposed Tim Horton's Restaurant in the 3500 Block of S. ML King that would be 20 feet in height and would have a 5 foot setback

from the front property line. The applicant is also proposing to erect 2 wall signs on the future building that would have a combined area of 86.22 square feet. Section 1442.12(h)(5)(B) of the Sign Ordinance requires a 20 foot setback for ground signs that are 20 feet in height. Section 1442.13(i) of the Sign Ordinance allows a maximum area of 50 square feet for two wall signs combined. Variances of 15 feet to the required setback for a ground sign and 36.22 square feet to the allowable wall sign area are therefore, being requested. Staff recommended denial of the requests on a finding that the variances would not be consistent with the practical difficulty criteria of Section 1244.06 (c) or the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application.

Mark Kellenberger, Tim Horton's, spoke in support of the variance request. He stated that the practical difficulty involves the lower elevation of the site in comparison to the elevation of the street. He also said that it would look odd to the sign in the landscape island in front of the building as it would be setback approximately 50 feet from the road. Mr. Kellenberger said that as a compromise, the sign could be pushed further to the north so that the setback could be increased to 10 feet instead of 5 feet.

Mr. McGrain asked why the wall sign on the side of the building is necessary if there is a ground sign for identification from the north and south.

Mr. Kellenberger stated that the wall sign on the side of the building could be eliminated if the variance for the ground sign is approved.

Mr. Horne asked if it is economically feasible to put in another fast food restaurant in this area.

Mr. Kellenberger stated that Tim Horton's specializes in donuts and coffee and does most of its business in the mornings. He said that it is different from other fast food restaurants in the area.

Mr. Burgess asked if anyone else wished to address the Board. Seeing none, the Board moved into the Committee of the Whole.

Mr. Frederick stated that he agrees with the staff analysis. He said that the plan could have been modified to accommodate a greater setback for the sign. Mr. Frederick said that he cannot identify a practical difficulty that would warrant a variance since there is nothing unique about the site that sets it apart from any other site.

A. Frederick moved to approve BZA-3906.07, a variance of 15 feet to the required setback for a ground sign and 36.22 square feet to the allowable wall sign area for a new Tim Horton's in the 3500 Block of S. ML King, on a finding that the variance would not be consistent with the practical difficulty criteria of Section 1244.06 (c) or the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application. Seconded by E. Horne.

| VOTE | YEA | NAY |
|---------|-----|-----|
| McGrain | X | |
| Horne | X | |
| Hilts | X | |

| VOTE | YEA | NAY |
|-----------|-----|-----|
| Burgess | X | |
| Mayberry | X | |
| Frederick | X | |

Motion carried, 6-0, BZA-3906.07, was denied.

C. BZA-3907.07, 1215 E. Michigan Avenue

This is a variance request by RWL Sign Company on behalf of Sparrow Health System. The applicant is proposing to erect a 175 square foot wall sign on the south elevation of the west wing addition of Sparrow Hospital at 1215 E. Michigan Avenue. Section 1442.17 of the Sign Ordinance allows a maximum area of 50 square feet for a wall sign at this location. A variance of 125 square feet to the allowable wall sign area is therefore, being requested. Staff recommended approval of the request on a finding that the variance would be consistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application.

Ira Ginsburg, Sparrow Health System, spoke in support of the variance. He stated that he met with the Eastside Neighborhood Organization and they did not have any concerns about the requested variance.

Mr. Burgess asked if anyone else wished to address the Board. Seeing none, the Board moved into the Committee of the Whole.

Mr. Hilts stated that thousands of people visit this facility and good signage is critical since a lot of these people are in a stressful situation when they have to go to the hospital.

Mr. Burgess said that the sign will be beneficial to helicopters as well as drivers. He also said that the hospital is restricted, by agreement with the eastside neighborhood organizations, to the current site which allows them to only build vertically rather than horizontally.

Mr. Frederick stated that this sign will be visible from a long distance and is necessary for people who may not be familiar with the area. He said that the staff report adequately described the practical difficulty in this situation.

B. McGrain moved to approve BZA-3907.07, a variance of 125 square feet to the wall sign area limitation for a new wall sign at 1215 E. Michigan Avenue, on a finding that the variance would be consistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application. Seconded by M. Mayberry.

| VOTE | YEA | NAY |
|---------|-----|-----|
| McGrain | X | |
| Horne | X | |
| Hilts | X | |

| VOTE | YEA | NAY |
|-----------|-----|-----|
| Burgess | X | |
| Mayberry | X | |
| Frederick | X | |

Motion carried, 6-0, BZA-3907.07, was approved.

VI. OLD BUSINESS

- A. Rules of Procedure - No action
- B. BZA-3817.04, 1014 S. Pennsylvania Avenue - No action
- C. BZA-3900.07, Vacant Lot, N. of 3228 Everett Lane - No action

VII. PUBLIC COMMENT - none

VIII. APPROVAL OF MINUTES

A. Minutes of Regular Meeting held May 10, 2007

A. Frederick moved, seconded by M. Mayberry to approve the minutes of May 10, 2007, as printed. On a voice vote, the motion carried unanimously, 6-0.

IX. NEW BUSINESS

A. BZA-3904.07, 1709 Moores River Drive - Request for reconsideration

The applicant's for BZA 3904.07 are requesting, through their attorney, that the Board reconsider their case, based upon evidence not previously considered by the BZA. As background information, BZA 3904.07 is a request for a side yard setback variance to permit a 4.5 foot extension of a previously existing garage at 1709 Moore River Drive. This case involves an attached garage that is to be 2 stories in height and will maintain the existing side yard setback of 3 feet. Since the ordinance requires a 6 foot side yard setback, a variance of 3 feet for the 4.5 foot extension is being requested.

The primary reasons for the applicant's request, as expressed by their attorney, are as follows:

1. The applicants were not represented by Council at the first hearing, believing that the variance was likely to be approved.
2. The BZA may not have been fully aware of the "nonconforming" regulations concerning the existing footprint of the house and the applicant's right to construct a 2nd story.

3. Constructing an addition on the back of the house as suggested by the BZA is impractical because of the sloping grade of the property immediately behind the current house.

If the BZA determines that there is enough evidence to reconsider the variance request, a new public hearing will need to be held. The earliest this could occur is at the July 12, 2007 BZA meeting.

Robert McCarthy, Attorney representing Byron & Gabrielle Haskins, stated that the Zoning Administrator's comments to the Haskins were appropriate and the Haskins relied on that information. Mr. McCarthy said that a building permit was issued and construction began before the variance was heard and now the Haskins have a serious situation to deal with. He said that when a Circuit Court reviews this case, the Haskins are likely to prevail because the decision of the Board was not based upon reasonable discretion. He stated that the Board appears to have based their decision, in large part, on the complaints from the adjoining neighbors. Mr. McCarthy said that the Haskins have an automatic right to build the second story and therefore, that portion of the project should never have been considered during the Board's deliberations.

Ms. Stachowiak stated that she did tell Mrs. Haskins that she thought the variance was likely to be approved and that it would be supported by the staff. However, the permit was issued at the request of Mrs. Haskins who said that if she did not get started on the project immediately, she would lose her excavator.

Mr. Frederick said that the minutes from the May 10, 2007 meeting left out a lot of the discussion. He said that everything Mr. McCarthy mentioned in his written and oral presentation, including the shed and grade issues, were heard and considered by the Board at the May 10th meeting.

Mr. Hilts said that without any new information, the board cannot reconsider the case. He also said that the shed behind the house does not present a practical difficulty.

A. Frederick moved to determine that the Board of Zoning Appeals has not been presented with any new information that would allow the Board to reconsider the variance. Seconded by E. Horne.

| VOTE | YEA | NAY |
|-----------|-----|-----|
| McGrain | X | |
| Mayberry | X | |
| Horne | X | |
| Hilts | X | |
| Burgess | X | |
| Frederick | X | |

Motion carried, 6-0, request for reconsideration of BZA-3904.07, was denied.

A. Excused Absences

B. McGrain moved, seconded by A. Frederick to approve an excused absence for Mr. Swix from the June 14, 2007 meeting.

On a voice vote, the motion carried unanimously (6-0)

G. Hilts moved, seconded by E. Horne to approve an excused absence for Mr. McGrain from the July 12, 2007 meeting.

On a voice vote, the motion carried unanimously (6-0)

X. ADJOURNMENT AT 9:10 p.m.

Respectfully submitted,

Susan Stachowiak, Zoning Administrator